KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General 3 MICHAEL B. FRANKLIN Deputy Attorney General 4 State Bar No. 136524 455 Golden Gate Avenue, Suite 11000 5 San Francisco, CA 94102-7004 Telephone: (415) 703-5622 6 Facsimile: (415) 703-5480 Attorneys for Complainant 8 BEFORE THE BOARD OF REGISTERED NURSING 9 DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA 10 2012-48 11 In the Matter of the Accusation Against: Case No. 12 NICHOLAS JAMES SCHMITZ ACCUSATION 1346 Stevenson Street, Apt. B302 13 San Francisco, CA 94103 14 Registered Nurse License No. RN 738152, 15 Respondent. 16 17 Complainant alleges: 18 **PARTIES** 19 Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her 20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of 21 Consumer Affairs. 22 2: On or about October 10, 2008, the Board of Registered Nursing issued Registered 23 Nurse License Number RN 738152 to Nicholas James Schmitz (Respondent). The Registered 24 Nurse License was in full force and effect at all times relevant to the charges brought herein and 25 will expire on February 29, 2012, unless renewed. 26 /// 27 /// 28 111. 1

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

- 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.
 - 6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- 7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

..."

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions Code section 4022. It is a hallucinogenic drug.

Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

Ecstasy is a street name for Methylenedioxymethamphetamine (MDMA), a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(6) and a dangerous drug as designated by Business and Professions Code section 4022.

Cocaine is a Schedule I (in base/rock/crack form) or Schedule II controlled substance as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6), and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

Mushrooms or "Shrooms" contain psilocybin and/or psilocyn which are Schedule I controlled substances as designated by Health and Safety Code section 11054(d)(18) and (19), and are dangerous drugs as designated by Business and Professions Code section 4022.

Psilocybin and psilocyn are hallucinogenic drugs.

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FIRST CAUSE FOR DISCIPLINE

(Illegally Obtain or Possess Controlled Substances)

9. Respondent is subject to disciplinary action under Code section 2761(a), unprofessional conduct, as defined in Code Section 2762(a), in that between March 2010 and December 2010, Respondent illegally obtained and/or possessed the following drugs and or controlled substances: cocaine, methamphetamine, mushrooms and ecstasy. In addition, between March 2010 and October 18, 2010, Respondent illegally obtained and/or possessed marijuana.

SECOND CAUSE FOR DISCIPLINE

(Use of Controlled Substances)

10. Respondent is subject to disciplinary action under Code section 2761(a), unprofessional conduct, as defined in Code Section 2762(b), in that between March 2010 and December 2010, Respondent illegally used the following drugs and or controlled substances: cocaine, methamphetamine, mushrooms and ecstasy. In addition, between March 2010 and October 18, 2010, Respondent illegally used marijuana.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse License Number RN 738152, issued to Nicholas James Schmitz
- 2. Ordering Nicholas James Schmitz to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: July 21, 2011

LOUISE R. BAILEY, M.ED., RN

Executive Officer

Board of Registered Nursing Department of Consumer Affairs

State of California
Complainant

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